* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Crl. Misc. Application no. 3314/2006**
in
W.P(Crl) No.938/2001

% Date of Decision: 16.04.2010

Ashok Kumar Aggarwal .... Petitioner

Through Mr. Ashok Bhasin Sr. Advocate with Mr.Aman Vachher, Mr.Yashraj Singh Deora and Mr.Ashutosh Dubey, Advocates

Versus

Union of India & Ors .... Respondents

Through Mr.Pankaj Gupta, Advocate for the respondent No.1/UOI.
Mr.Gopal Subramanium, Solicitor General of India with Mr.Dayan Krishnan, Advocate for the CBI.
Mr.Amit Sharma, APP for the State.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

1.	Whether reporters of Local papers may be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

ANIL KUMAR, J.
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1. This is a petition under Section 482 of The Code of Criminal Procedure, 1973 for necessary directions for taking appropriate action against respondent no. 5 under the provisions of Section 340 of the Code of Criminal Procedure, 1973 for making false statement and committing perjury by filing false affidavit.

2. The petitioner had filed a petition before a Division Bench of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for issuance of a writ, order or direction in the nature of mandamus or any other writ or proper order directing the Union of India through its Secretary, Ministry of Home Affairs (respondent no. 1) and Director, CBI (respondent no. 2) to transfer investigation in cases R.C. No. SI8/E0001/99, dated 29th January, 1999 and SI9/E0006/99, dated 7th December, 1999 from respondents no. 3 to 5 to some other high ranking officials of the agency. In the said petition the petitioners had contended that respondents 3 to 5 were conducting the investigation against him unfairly and improperly and were transgressing all limits to abuse the investigative powers. According to the petitioner the investigation was being done in malafide manner. The petitioner asserted that it was never his intention that the matter be not investigated, however, he wanted that it should be handed over to impartial and senior officers of CBI. According to him the present application pertains to RCS SI9/E0006/99 dated 7.12.1999.

3. It is pertinent to notice that a case was registered on 29th January, 1999 on the basis of a written complaint of Mr.Abhijit Chakraverty, Additional Director, Enforcement Directorate, New Delhi

under Sections 120B read with Sections 193, 467 & 471 of Indian Penal Code against unknown officers of Delhi zone of Enforcement Directorate on the ground that Sh.Subhash Chand Barjatya was framed in a FERA case on the basis of a forged fax message purportedly from the Swiss Bank Corporation, Zurich, Switzerland which reflected a transaction of US $ 1,50,000/- from the account of Royalle Foundation, Zurich, Switzerland. It was alleged that Sh.Barjatya was illegally detained and the file related to Sh.Barjatya was created by back dating the entries after the searches.

4. The petitioner is an IRS officer of 1985 batch, had worked as Deputy Director, Delhi zone, Enforcement Directorate, New Delhi during the relevant period and he was transferred out on 31st December, 1998 and posted as Deputy Secretary, Department of Revenue, Ministry of Finance, New Delhi (awaiting posting). The investigation had revealed that on 25th December, 1997 the petitioner and Sh.Abhishek Verma (another person) had allegedly conspired to frame Sh.Barjatya in a FERA case and on the advice of the petitioner, the debt advice of Swiss Bank Corporation was allegedly forged and transmitted on the fax machine of Mr.Barjatya. The allegation in the circumstances against the petitioner is that by abusing his official position as a public servant he got the forged fax recovered from the fax machine of Sh.Subhash

Barjatya by organizing search on 1st January, 1998 which was also used to detain Sh.Barjatya illegally from 1st January, 1998 till the evening of 2nd January, 1998. The allegation against the petitioner is also that he demanded and accepted an illegal gratification of Rs.10 lakhs from the co-accused Sh.Abhishek Verma.

5. The allegation against the petitioner is also that at his instance the file relating to Barjatya was created by back dating the entries in the file and his role was that of a main accused, who is a senior officer and while holding a position in law enforcement, had abused his official position as public servant by demanding and accepting illegal gratification. The co-accused in his confessional statement before the Magistrate under Section 164 of the Criminal Procedure Code corroborated with the documentary evidence. The petitioner appeared before the Investigating Officers till the co-accused confessed to the crime on 2nd December, 1999. Thereafter, petitioner is alleged to have gone underground and submitted an application to his department for sanction of his earned leave and remained underground without awaiting the sanction of his leave. Being a senior officer, he had knowledge about the manner and means which are employed by the investigating agencies for locating an absconder. Therefore, with grave

difficulty he was arrested from a hotel on 23rd December, 1999 where he was living under an assumed name of `Ravi Garg'.

6. The allegation against the petitioner is also that he tried to intimidate Sh.Barjatya in January, 1999 to withdraw his complaint against him and also intimidated co-accused Abhishek Verma. According to the respondents, the case of the petitioner is a case of exemplary corruption in high places and high handedness of a senior Government official in illegally framing a person in a criminal case.

7. Though the allegation of the respondent is that the petitioner was arrested from a hotel where he was living under the assumed name of Ravi Garg, however, petitioner alleged in the writ petition filed by him that the respondent Nos.4 & 5 had arrested him and his younger brother on 19th December, 2000. Petitioner alleged that his arrest before review of his suspension reflects malafide. The petitioner also alleged that investigating officer of petitioner in RC No.SIU 8/E0001/99 dated 29th January, 1999 is respondent No.4 whereas respondent No.5 is the Investigating Officer in RC No.SIU9/E0006/99 dated 7th December, 1999 and these respondents are hand in glove with respondent No.3 who is bent upon to implicate the petitioner by planting the evidence. It was alleged that the said respondents were forging documents to

implicate the petitioner in false cases and were exercising the investigative power in a malafide manner. It was also contended that he had reasonable apprehensions that he would not get a fair deal from the above said officers of CBI and, therefore, the investigation should be transferred to some other high ranking official of the CBI. Petitioner, therefore, prayed for transferring investigation of cases from respondent Nos.3 to 5 to some other high ranking officials and to provide security to him for protection of his fundamental rights.

8. During the course of the hearing, on being pointed out by the CBI counsel that the Investigating Officers had completed the investigation report, this Court had passed an order dated 4th April, 2002 directing the competent authority of CBI to file an affidavit to show the investigation status in the two RCSs. In response to the above said order, affidavits were filed on behalf of respondent no. 2, by respondents no. 4 and 5, dated 5th April, 2002, wherein it was stated that the Director, CBI had passed appropriate orders in RC S18 1999E 0006 and had forwarded the matter to Revenue Secretary and other concerned authorities for requisite orders/action, and in RC S19 1999 0006 the Joint Director was presently seized of the matter and it was yet to be submitted to the Director, CBI for necessary investigation. In view of the above mentioned affidavits this Court disposed of the

petition by an order dated 9th April, 2002. The relevant part said order is as under-

> "..... By Court order dated 4.4.2002, competent authority of CBI was directed to file an affidavit to show the investigation status in two RCs. In response, two affidavits have been filed on behalf of R-2 disclosing that Director, CBI had passed appropriate orders in RCS 18/99 and had forwarded the matter to Revenue Secretary and other concerned authorities for requisite orders/action. In the other case, RCS-19, however, the Joint Director was presently seized of the matter and it was yet to be submitted to Director, CBI for necessary investigation.
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> In view of this position, both sides agree to the disposal of this petition by the following order:-
>
> > "Revenue Secretary and/or other concerned authorities who are seized of RCS 18/99 are directed to examine and consider the record of investigation fairly and objectively taking in regard all relevant factors and circumstances and then pass appropriate orders under law within two months from receipt of this order.
> >
> > Director CBI is also directed to examine the investigation record of RCS 19/99 and to consider all relevant aspects and factors in the light of petitioner's complaints and then to pass appropriate orders under law in the matter within two months from receipt of this order."
>
> Sd/-
> (B.A.KHAN)
> JUDGE
>
> Sd/-
> (V.S.AGGARWAL)
> APRIL 09,2002 JUDGE"

9. Pursuant to the order dated 9th April, 2002 when the matter was pending consideration before the Joint Director, the Director CBI duly examined the investigation record in terms of the direction of this Court. It was opined by the Director CBI that the investigation had been done objectively and impartially. He also directed to send the report of the Superintendent of Police to the competent Authority for seeking sanction for prosecution and that the letter of Rogatory should be pursued diligently. Pursuant to this, sanction was granted and charge sheet was filed by the CBI against the petitioner on 5th December, 2002 and cognizance was taken on 10th January, 2003.

10. The present petition under Section 482 of The Code of Criminal Procedure, 1973 for necessary directions for taking appropriate action against respondent no. 5 under the provisions of Section 340 of the Code of Criminal Procedure, 1973 for making false statement and committing perjury by filing false affidavit was filed on 3rd April. 2006. The petitioner has alleged that respondent no. 5 had intentionally misled this Court by making a false statement on 4th April, 2002 that the investigation in the case, FIR No. SI9/E0006/1999, had been completed by him and by filing a false affidavit dated 5th April, 2002 to the same effect. It is contended that in the affidavit respondent no. 5 had specifically stated that the Final report Part I in the said RC was

submitted by him to the Superintendent of Police SIU-IX Branch of CBI on 11.01.2002 and on 11.01.2002 itself, the Supdt. Of Police SIU-IX marked the file to the concerned Law Officer for submitting Report and the said concerned Law Officer submitted the Report to the Supdt. of Police on 25.01.2002. Thereafter, the Supdt. Of Police submitted his comments to Dy. Inspector General of Police on 10.03.2002 and thereafter, Dy. Inspector General of Police marked the file to the Dy. Legal Adviser for his comments on 01.03.2002 who submitted his comments to Dy. Inspector General of Police on 11.03.2002 and thereafter, the Dy. Inspector General of Police submitted his comments to the Joint Director on 22.03.2002 whereafter, the matter was pending scrutiny with the Joint Director and after receipt of the file, the same was to be forwarded to the concerned Ministry, Chief Vigilance Commissioner and the parent department of the petitioner for further necessary action.

11. The petitioner has contended that even though respondent no. 5 had averred in his affidavit dated 5th April, 2002 that the investigation in the case FIR No. S19/E0006/1999 is complete and the final report has been filed by him, it is apparent from the charge sheet filed on 5th December, 2002 that respondent no. 5 has recorded the statements of 13 witnesses, i.e. PWs 276 to 278 and PWs 340 to 349 after filing the

above said affidavit and getting the writ petition disposed off. It is further contended that respondent no. 5 had made the statement on 4th April, 2002 and filed the affidavit on 5th April, 2002 with the sole intention of frustrating the grievance made by the petitioner for transferring of the investigation from the hands of respondent no. 5 and this tantamount to misleading the Court by making false statement and by giving false affidavit. According to the petitioner, the affidavit dated 5th April, 2002 does not state anywhere that any further investigation was required and this creates an impression that investigation was complete and no further investigation was required. According to him, the order dated 9th April, 2002 clearly reflects that an impression had been created that no further investigation was required. The present application was filed on petitioner coming to know in July, 2005 when all the documents were finally made available to the petitioner. It is also contended that if the approval of the director of CBI was given on 23.4.2002, the investigation by Respondent No. 5 after that date was illegal. The Respondent No. 5 has recorded the statements of 13 witnesses from 10.5.2002 to 16.10.2002. The plea of the petitioner is also that no names or particulars of senior officers have been given at whose instance further investigation was done after 23.4.2002. In the circumstances, it is stated that an offence under section 195 has been made out and reliance has been placed on Pritish Vs State of

Maharashtra, (2002) 1 SCC 253 at para 16. The learned counsel for the petitioner has also relied on K.Karunakaran v. T.V. Eachara Warrier & Anr., (1978) 1 SCC 18, Iqbal Singh Marwah Vs Meenakshi Marwah, (2005) 4 SCC 370; Dhanajay Sharma v. State of Haryana & Ors., (1995) 3 SCC 757 and In Re. Bineet Kumar Singh, (2001) 5 SCC 501 in support of his contentions. Reliance has also been placed on Mahila Vinod Kumari Vs State of MP, (200) 8 SCC 34 and (2000) 2 SCC 367 referring to Murry & Co Vs Ashok Kr. Newatia

12. The respondents have contested the petition contending that the present petition has been filed by the petitioner much after the charge-sheet was filed against the petitioner and after cognizance has been taken. It is asserted that the present petition is merely an afterthought and is a part of a series of petitions/applications filed by the petitioner against the investigation officers in order to harass and intimidate them. It is averred that respondent no. 5 in his affidavit dated 5th April, 2002 had clearly stated that he had submitted Final Report Part-I as per the CBI manual and that the same was pending scrutiny with the Joint Director, CBI on the date of filing of the affidavit. The respondents disclosed that as per CBI Crime Manual a final report Part I is prepared setting out in detail the result of the enquiries made and the recommendation of the deputy of the action to be taken. Though this

final report Part I is submitted on completion of investigation, however, it is to be submitted to the superior officers and the law officers of CBI for the assessment of the merits and demerits of the case and to facilitate the passing of final orders thereon by the competent authority. On scrutiny of the final report part I by independent law officers, the comments are given in a prescribed format of a report called "Final Report Part II". For giving comments in a prescribed format the law officer is required to examine case diaries, statements of witnesses as well as material documents, articles etc and they have to consider the opinions and suggestions of the investigating officer as also the relevant facts. The affidavit filed by Sh.Ramnish, Investigating Officer of case RC S18 1999 E 0001 dated 5th April, 2002 reveals that on 13th April, 2000 the legal advisor had marked the file to additional advisor of legal division of CBI for its comments who had given the comments on 12th May, 2000. The legal advisor had made observation for obtaining further evidence in the case while submitting the comments to the Special Director on 16th May, 2000 and it was only thereafter, supplementary final report part I was submitted on 8th September, 2001.

13. Pursuant to the direction dated 4th April, 2002 a detailed affidavit was filed dated 5th April, 2002 explaining the mode and method by

which FR-I was prepared stipulating that FR-I was submitted on 11.1.2002 to SP who had marked it to the law officer for submission of his report which is described as FR-II. On submission of FR-II by the law officer on 25.1.2002, SP made her comments and referred to the Dy. Inspector General of Police on 1.3.2002 who marked the file to the Deputy Legal advisor for his comments. Deputy Legal Advisor submitted his comments on 11.3.2002 to the DIG who submitted it to the Joint Director on 22.3.2002 and therefore, on the date of filing the affidavit it was pointed out that the matter was pending with the Joint Director.

14. During the hearing, the file with confidential noting was shown to the Court and later on even confidentiality about the movement of the file was waived. The respondents have disclosed that on 8th April, 2002, the Joint Director gave detailed comments and on 23rd April, 2002 pursuant to the order dated 9th April, 2002, the Director, CBI, gave due consideration to file and made detailed comments and direction was given to complete the loose ends. Charge Sheet was filed on 5th December, 2002. According to the respondents there was no prohibition to examine more witness after the order dated 9th April, 2002 was passed more so because the statement of only those persons who had already been mentioned earlier were recorded.

15. According to the respondents, the application of the petitioner is a part of the design to jeopardize prosecution against him for possessing disproportionate assets to the tune of Rs.12,04,46,938.78 which are 7615.45% of his known sources of income. The respondents gave the details of all the witnesses including PW 276, Rajender Kumar Goenka whose name had figured in the statement of PW 107 which was recorded on 3.4.2001; PW 277, Pawan Kumar Jindal; PW 278, Rajesh Kumar Jindal; PW 340, Sardar Saranjit Singh; PW 341, Amarjit Singh Aneja; PW 342, Bijender Jain; PW 343, Chand Narain Dhar; PW 344 Sanjeev Kumar Gupta; PW 345, Devi Lal Rajan; PW 346, Dharam Pal Bansal; PW 347, Sandeep Goel; PW 348, Sunil Kansal and PW 349, Parmod Goel and why these witnesses were examined after disposal of the writ petition where it was agreed that the case was presently seized with the Joint Director and that the CBI director should examine the matter in the light of the complaint of the petitioner and then to pass appropriate orders.

16. The respondents also contended that the present petition is a disguised contempt petition. According to respondents the petition is belated and is not maintainable. The learned counsel for the

respondents also contended that section 340 of the Criminal Procedure Code could be invoked only where there is a definite finding that there is an impact on the administration of justice. It is stated that Respondent No. 5 has not made any false deposition on affidavit so as to entail any consequences for perjury. The petition has been filed with a view to pressurize and intimidate the investigating officers. According to respondents application is a part of the design of the petitioner to jeopardize the prosecution against him. Disclosure of fact that FR-I was pending before the joint director was indicative of that there could be some loose ends which could be tied up according to directions by the senior officers. The Court had directed the Director of CBI to examine the investigation record and consider all relevant aspects and factors in the light of petitioners grievances and then to pass appropriate orders. The order was passed by the Director on the 23rd April, 2002 which order was not challenged by the petitioner and present petition was filed four years after that in 2006. The statements recorded after the order of Director were only to the extent of tying the loose ends. Charge sheet was filed on 5.12.202 and cognizance was taken on 10th January, 2003. The charge sheet would show that the petitioner had connived with the family members and chartered accountants and laundered his ill gotten wealth in the companies owned and operated by his family members in the form of share capital. It is further asserted that investigation has

revealed that the shareholders were bogus and they had merely provided entry cheques after taking cash and commission. The petitioner is also alleged to have opened eight fictitious accounts of non existing persons. The respondents also gave the detailed reasons for recording various statements after the disposal of the writ petition in order to tie up the loose ends.

17. The learned counsel for the parties have cited various judgments during protracted arguments. It may not be necessary to deal with them in detail as they have been given in peculiar facts and circumstances of those cases. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SCC 111 (vide para 59), the Supreme had observed:-

> " It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

In P.S.Rao Vs State, JT 2002 (3) SC 1, the Supreme Court had held as under:

> ". There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778) had also held that a decision cannot be relied on without considering the factual situation. In the same judgment the Supreme Court also observed:-

> " Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In Rafiq Vs State, 1980 SCC (Crl) 946 it was observed as under:

> "The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases."

18. The law has been settled by the Courts that the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) unless the Court comes to the conclusion that it is expedient and in the interests of justice to do so. In Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., (2005) 4 SCC 370, a five judge bench of the Supreme Court while examining the scope of Section 340 of the Code of Criminal Procedure had observed:- "In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that an enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency is normally to be judged by the Court by weighing not the magnitude of

injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. Similarly in Chajoo Ram v. Radhey Shyam & Anr., AIR 1971 SC 1367, the Supreme Court had observed:-

> "The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavit is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge."

19. In Bibhuti Bhusan Basu v. Corporation of Calcutta & Ors., 1982 Cr.LJ 900 (Cal) the Calcutta High Court had observed:-

> "The provisions of Section340 are more or less procedural and indicates how a complaint in respect of offence referred to in Section 195(1)(b)0 is to be made. The Court, in a proceeding Under Section 340 or before directing a complaint to be lodged must in my view, form the opinion on being satisfied or come to the conclusion on such satisfaction that the person charged, has intentionally given false evidence and that, for the eradication of the evils of perjury and in the interest of justice, it is expedient that he should be prosecuted for the offence and furthermore the Court, at the time of or before delivering the judgment, must, as mentioned above, duly form the opinion that the person charged, gave false evidence and such formation of opinion, must be on consideration of materials duly placed. These apart, the Court should, before directing a complaint to be filed, also consider, if the evidence as led, was intentionally done and knowing the same to be false or the same was intended to have some unlawful gain over the adversary and was aimed at having some advantage irregularly. Thus, like all other Criminal trials or proceedings, the existence of mens rea or the criminal intention behind the act as complained of will also have to be looked into and considered, before any action under Section 340 is recommended. Mere sufferance of the petitioner, because of the inaction or irregular or improper or wrong action of his adversary, would not be enough. If there is any doubt or any semblance of such doubt in the mind of the Court, in respect of the bona fides of the defence of the person charged of the action, the Court, in my view, will not be justified in exercising the power to direct the lodging of a complaint Under Section 340 simply because such action has been filed. The purpose of making a complaint against a person would be for intentionally giving false evidence or for intentionally fabricating such evidence and that too with the aim and object as mentioned hereinbefore, at any stage of the proceeding."

20. In K.Karunakaran v. T.V. Eachara Warrier & Anr. (1978) 1 SCC 18, an appeal by way of special leave was preferred by the appellant against a judgment and order of the High Court of Kerala, sanctioning a complaint against the appellant along with two others for an offence under Section 193 I.P.C. after making an enquiry under Section 340(1) Cr.P.C. While refusing to interfere with the order of the High Court the Supreme Court had observed:- "An enquiry, when made, under Section 340(1) Cr.P.C. is really in the nature of affording a locus poenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence." All that has been laid down in the above-said case is that in an inquiry under S-340(1) all that the Court has to consider is whether a prima facie case has been made out and whether it is in the interests of justice to institute a complaint, and that during the preliminary enquiry contemplated under S-340(1) the person who is alleged to have committed the offence has no right to be heard.

21. Dhanajay Sharma v. State of Haryana & Ors., (1995) 3 SCC 757 relied on by the petitioner, a petition was filed seeking issuance of a writ

of habeas corpus for the release of one Dhananjay Sharma from illegal and unauthorized custody of the Haryana Police. Pursuant to the direction of the Court to have a search made and to produce the detenu in court, affidavits were filed by Respondents. CBI was asked to find out the veracity of the statements made by the deponents. It was found that the statements made in the affidavits by the respondents were false and contempt proceedings were initiated against the respondent. In the case of the petitioner, contempt proceedings have not been initiated but an application has been filed under section 340 of the Criminal Procedure Code and a specific plea has been taken by the respondents that after the application of the petitioner for alleged Contempt of Court has become barred by time, the present application has been filed. Similarly In Re. Bineet Kumar Singh, (2001) 5 SCC 501, an order of The Supreme Court was found to be forged and fabricated and therefore, Contempt proceedings were initiated. The Court made some observations about the nature, scope and object of the law of contempt of Court.-

> " The law of Contempt of Court is essentially meant for keeping the administration of justice pure and undefiled. It is difficult to rigidly define contempt. While on the one hand, the dignity of the Court has to be maintained at all costs, it must also be borne in the mind that the contempt jurisdiction is of a special nature and should be sparingly used.
>
> The sole object of the Court wielding its power to punish for contempt is always for the course of

> administration of justice. Nothing is more incumbent upon the Courts of justice, than to preserve their proceedings from being misrepresented, nor is there anything more pernicious when the order of the Court is forged and produced to gain undue advantage. Criminal Contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and willfully made by party to the proceedings to obtain a favorable order would undoubtedly tantamount to interfere with the due course of judicial proceedings. When a person is found to have utilized an order of a Court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilization of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself is the author of fabrication."

22. The prosecution for perjury is to be sanctioned only in those cases where perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. In view of the language used in section 340 of Cr. P.C unless the Court is of the opinion that it is expedient in the interest of justice. This means that not in every case such a course has to be adopted. Before filing of complaint, the Court may see prima facie whether it would be expedient and in the interest of justice. This expediency will normally be judged by the court by weighing not the magnitude of injury but having regard to the effect or impact, such commission of offence has upon administration of justice. Mere sufferance of the petitioner, because of the inaction or irregular or

improper or wrong action of the respondents would not be enough. The primary grievance of the petitioner is that after giving deposition on affidavit that investigation is complete respondent no.5 has recorded statements of 13 witnesses. According to the petitioner, the affidavit dated 5th April, 2002 does not state anywhere that any further investigation was required and this creates an impression that the investigation was complete and no further investigation was required. The respondent no.5 in his deposition on affidavit was categorical that that the Joint Director was seized of the matter and it was yet to be submitted to the director. In the circumstances, a mere impression or perception of the petitioner will not make the deposition on affidavit of the respondent no.5 to be false on account of deliberate and conscious act. In the circumstances, it cannot be inferred that conviction of the respondent no.5 will be reasonably probable or likely in case complaint is filed against him.

23. The order dated 9th April, 2002 was passed as both the parties had agreed for a certain course of action. This course of action was that the Director will consider all the relevant aspects and factors in the light of petitioner's complaint and then would pass appropriate orders within two months. In the affidavit filed by the respondent no.5 it is specifically

stipulated that the Final report Part I in the RC was submitted by him to the Superintendent of Police SIU-IX Branch of CBI on 11.01.2002 and on 11.01.2002 itself, the Supdt. Of Police SIU-IX marked the file to the concerned Law Officer for submitting Report and the said concerned Law Officer submitted the Report to the Supdt. of Police on 25.01.2002. Thereafter, the Supdt. Of Police submitted his comments to Dy. Inspector General of Police on 10.03.2002 and thereafter, Dy. Inspector General of Police marked the file to the Dy. Legal Adviser for his comments on 01.03.2002 who submitted his comments to the Dy. Inspector General of Police on 11.03.2002 and thereafter, the Dy. Inspector General of Police submitted his comments to the Joint Director on 22.03.2002 and the matter was pending scrutiny with the Joint Director. After receipt of the file, the same was to be forwarded to the concerned Ministry, Chief Vigilance Commissioner and the parent department of the petitioner for further necessary action. This Court has also perused the relevant file and the relevant notings which were stated to be confidential in the first instance but later on only in respect of the movement of file and various notings, the confidentiality about them was waived by the learned counsel for the respondents on instruction. The respondents have also shown the details as to in what circumstances the other witnesses were examined.

24. The Director considered all the pleas and contentions and pursuant to the order of the Court passed an appropriate order which was not challenged for four years. If the investigation comprises of various stages and it was represented before the Court that one of the stage was complete, the petitioner cannot be allowed to contend that while completing the remaining stages, if the necessity of any further statements was felt or was required to tie up the loose ends, the same could not be done as the petitioner had got an impression that after completion of FR-I, no further statements were to be recorded. If the matter was before the Joint Director and thereafter, the Director of CBI, it cannot be inferred that if more statements were recorded, it was by the respondent no.5 without any direction or concurrence of other higher officers. The allegations against the petitioner are serious and he cannot be permitted to dictate as to how the investigation was to be done. In any case the charge sheet was filed in 2002 and cognizance was taken in 2003 and present application was filed in 2006. The explanation given by the respondents about the expediency of having more evidence cannot be brushed aside on the basis of the order dated 9th April, 2002 passed by this Court. In the circumstances, on the basis of alleged impression of the petitioner, it will be difficult to hold that there is any violation, deliberate and conscious, of any order passed by

this court because of which this court should initiate an appropriate proceedings and should make a complaint under section 195 of the IPC. The application of the petitioner is misconceived and he is not entitled for any of the relief claimed by him in the facts and circumstances of the present case.

25. In the totality of facts and circumstances, the application of the petitioner is without any basis and he cannot be granted any of the reliefs sought by him and the application is liable to be dismissed. The application is, therefore, dismissed. However in the facts and circumstances of the case, the parties are left to bear their own costs.

April 16th, 2010 **ANIL KUMAR J.**

'Dev & k'